

(45)

Central Administrative Tribunal
HYDERABAD BENCH : AT HYDERABAD

O.A. No. 835/89.

Date of Decision : 11.2.1992

~~Ex. No.~~

D. Appa Rao

Petitioner.

Shri M.P.Chandra Mouli

Advocate for the
petitioner (s)

Versus

Union of India, rep. by Chief of Naval Staff,
Naval Headquarters, New Delhi-110 001 & 3 ors. Respondent.

Shri Naram Bhaskara Rao, Addl. Standing Counsel Advocate for the
for Central Govt. Respondent (s)

CORAM :

THE HON'BLE MR. SHRI R. BALASUBRAMANIAN, MEMBER (ADMN.)

THE HON'BLE MR. C.J. ROY, MEMBER (JUDL.)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)


HRBS
M(A)


HCJR
M(J)

(46)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: HYDERABAD BENCH ::
AT HYDERABAD.

O.A.No.835/89.

Date of Judgment: 11.2.1992.

Between:

D. Appa Rao .. Applicant

Vs.

1. Union of India, rep. by Chief of Naval Staff, Naval Head Quarters, New Delhi-110 001.
2. Flag Officer Commanding in Chief, Eastern Naval Command, Visakapatnam-530014.
3. Chief Staff Officer (P & A), Head Quarters, Eastern Naval Command, Naval Base, Visakapatnam. ..
4. Material Superintendent, Material Organisation, Eastern Naval Command, Visakapatnam-530 009. .. Respondents

For the applicant : Shri M.P.Chandra Mouli, Advocate.

For the respondents : Shri Naram Bhaskara Rao, Addl. Standing Counsel for Central Government.

CORAM:

HON'BLE SHRI R. BALASUBRAMANIAN, MEMBER (ADMN.)

HON'BLE SHRI C.J. ROY, MEMBER (JUDL.)

X JUDGMENT OF THE BENCH AS PER HON'BLE SHRI C.J.ROY, MEMBER (J) X

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This application is filed under section 19 of the Administrative Tribunals Act, 1985 to declare the order dt. 29-4-1988 bearing No.CE/9101/8 passed by 4th respondent, order dt. 26-11-88 bearing No.CE/9401/6 passed by 2nd respondent, and order dt. 30-12-1988 bearing No.NS/E/1107/DAR passed by 4th respondent as illegal, void and consequently to direct the respondents to give all consequential benefits to the applicant with effect from the date on which one Sri N.Ramappadu was promoted.

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2. The applicant while working as MT Driver Gr.II (under R-4) was issued with a charge-sheet with certain charges. As the disciplinary authority ordered de novo enquiry after conclusion of enquiry holding by the enquiry officer that none of the charges were proved, the applicant had filed an application in O.A.No.651 of 1987 before the Tribunal. The Tribunal, by orders dt. 17-12-1987 quashed the order while directing the respondents to proceed with the case on the basis of the enquiry report dt. 27-3-1986. The disciplinary authority passed order dt. 29-4-1988 holding that the charge No.3 was proved to the extent that the applicant used abusive language on the fellow Driver, and imposed penalty of reduction of pay by one lower stage for a period of one year. The applicant states that he had preferred an appeal against the said order of punishment to 2nd respondent and that the appellate authority by orders dt. 26-11-88 reduced the period from one year to six months without cumulative effect. The applicant alleges that, 4th respondents passed orders dt. 16-11-1988 stating that the period of suspension of applicant from 4-3-1985 to 10-6-1986 shall be treated as duty for the purpose of pension only and that no extra amount shall be paid for the period of suspension than what has already been paid as subsistence allowance. The applicant submitted a representation dt. 21-12-1988 requesting to treat the period of suspension as on duty with all consequential benefits, but alleges that the same was rejected by proceedings dt. 30-12-1988. The applicant alleges that aggrieved by the action of respondents filed this O.A.

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3. The respondents filed reply and countered the allegations made in the O.A. The respondents state that denovo enquiry was ordered as the Enquiry Officer did not proceed with the inquiry as per CCS(CCA) Rules, 1965. The respondents averred that the Competent Disciplinary authority, on careful consideration of the report and other relevant records was satisfied with the charge. III that it was proved and imposed the penalty of Reduction of pay by orders dt. 29-4-1988. It is also stated that the appellate authority reduced the penalty. The respondents deny the allegation that the Disciplinary Authority has not applied its mind. The respondents state that the impugned order of punishment is a reasoned and speaking order. It is also stated that the appellate authority also disposed-of the appeal after considering various points raised in appeal.

4. The respondents state that the proposal sent for regularising the period of suspension was considered after taking into account all the circumstances of the case and also keeping in view the penalty awarded by the Disciplinary Authority which did not completely exonerate the individual, ordered that the period of suspension be treated in terms of proceedings dt. 30-12-1988 bearing No. NS/E/1107/DAR. The respondents justify their action in imposing the penalty ordered vide impugned proceedings dt. 29-4-1988 and subsequent orders in appeal. The respondents also justify their action with regard to regularisation of period of suspension in proceedings dt. 30.12.1988 and state that the proceedings are legal, and valid. The respondents also deny the averments of illegal & arbitrary ^{as} contended by the applicant and desire the application be dismissed.

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5. We heard learned counsel for applicant Sri M.P. Chandra Mouli and Shri Naram Bhaskara Rao, learned counsel for respondents and perused the records carefully. The main issue in this case is when the disciplinary authority choose to differ from the Enquiry Officer who had exonerated the applicant from all the charges levelled, the disciplinary authority should have given an opportunity to the applicant to state his case before, his differing with the findings of the Enquiry Officer or not. In a Judgment, the Jabalpur Bench of this Tribunal vide ATR 1986 (2) CAT 577 had held:

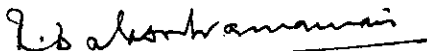
"It is true that under instructions contained in Rule 15(2) of the Rules, it is not necessary that the disciplinary authority cannot differ from or modify the findings of an Enquiry Officer, but when he has to do so he ought to fully examine the evidence on record and come to a conclusion that cannot be judicially questioned. In such cases, authority gives further opportunity of hearing to the delinquent official to explain his case. The test of prosecution evidence being established without any doubt has to be applied rigorously also in a departmental enquiry proceedings, and the disciplinary authority has to be satisfied about it."

We are in agreement with the conclusion of the Jabalpur Bench and hold that in this case also the disciplinary authority ought to have given a hearing to the applicant before differing with the Enquiry Officer. In view of this serious lapse in the principles of natural justice we have to set aside the punishment order dt. 29-4-1988 and the subsequent orders thereon. The respondents are, however, at liberty to proceed from the enquiry report stage by issuing a show cause notice to the applicant


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P. J. N.

on receipt of which the disciplinary authority has to come to his own independent conclusion giving full and cogent reasons in case he chooses to differ from the Enquiry Officer's findings in the light of the representations made by the applicant. The application is thus disposed-of with no order as to costs.


(R. BALASUBRAMANIAN)
MEMBER (A)

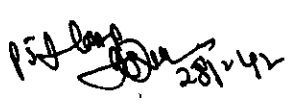

(C.J. ROY)
MEMBER (J)


Dated: 11th February 92 Deputy Registrar (J)

To

1. The Chief of Naval Staff, Naval Head Quarters, Union of India, New Delhi-1.
2. The Flag Officer Commanding in Chief, Eastern Naval Command, Visakhapatnam-14.
3. The Chief Staff Officer (P&A) Head quarters, Eastern Naval Command, Naval Base, Visakhapatnam.
4. The Material Superintendent, Material Organisation, Eastern Naval Command, Visakhapatnam-9.
5. One copy to Mr.M.P.Chandra Mouli, Advocate, Advocates Associatio High Court of A.P. Hyderabad.
6. One copy to Mr.N.Bhaskar Rao, Addl. CGSC. CAT.Hyd.
7. One spare copy.

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52/28/12/89
TYPED BY
CHECKED BY

COMPARED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. V.C.

THE HON'BLE MR. R. BALASUBRAMANIAN : M(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY :
M(JUDL.)

AND

THE HON'BLE MR. C. J. ROY : MEMBER(JUDL.)

DATED: 11-2-1992

ORDER/JUDGMENT:

R.A./C.A./M.A.No.

in

O.A.No.

835/89

T.A.No.

(W.P.No.)

Admitted and interim directions
issued.

Allowed

Disposed of with directions.

Dismissed

Dismissed as withdrawn

Dismissed for Default.

M.A. Ordered/ Rejected.

No order as to costs.

pvm.

